
OPINION OF THE PUBLIC ACCESS COUNSELOR

TRACEY M. LIMING,
Complainant,

v.

AVON POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
18-FC-58

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Avon Police Department (“APD”) violated the Access to Public Records Act¹ (“APRA”). Chief of Police Sean Stoops filed a response to the complaint on behalf of the department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 18, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute between a requestor and a town police department over requests for public records—including police interviews and 911 calls—containing three legal names used by the requestor over nearly a 14 year period of time.

Tracey M. Liming (“Complainant”) asserts that the Town of Avon Police Department (“APD”) violated the Access to Public Records Act (“APRA”) by improperly denying her access to certain public records.²

Although there are some disputes, Liming and APD appear to agree on most of the following information. Around February 20, 2018, Liming submitted a hand-written public records request to the Town of Avon Clerk-Treasurer (“Clerk”)³ seeking the following:

1. All paperwork from 2004 through 2017.
2. All 911 calls domestic calls, suicide calls.
3. Just everything under Tracey Siener, Tracy Jaffri, Avon Creek Apartment calls, Linden Square Apartment calls, restraining orders issued or revoked under Tracey Siener, Tracy Jaffri.
4. Copy of tape from interview summer 2004.
5. Copy of tape from interview summer 2010.

² Complainant also alleges an APRA violation by the Hendricks County Communication Center (“HCCC”) related to a request for recordings of numerous 911 calls from 2004 to 2018. Although, the issue of 911 calls is addressed generally, the HCCC is not a respondent to the complaint and was not invited to respond by this Office.

³ The Clerk-Treasurer is the initial contact point for all public records requests.

6. Any documents with above names and Jeff Fox.

The Clerk responded to Liming's request in a letter, dated the same day, acknowledging receipt of the request and replying to each of the items in the request.

The Clerk noted that the first item was not reasonably particular and invited Liming identify the documents she wanted with "greater specificity" and the town would respond. Next, the Clerk stated, with regard to item two, that the town did not have in its possession any 911 calls because Avon does not administer its own "PSAP,"⁴ but rather participates in the Hendricks County 911 call center. Beyond that, generally, the Clerk responded to the other items in Liming's request by stating whether the town believed it may or may not have responsive records, concluding that the town would review its records and provide the records (or a status update) by March 13, 2018.

APD contends that Liming sent the Clerk an email withdrawing the request on February 28, 2018.⁵ On March 5, 2018, Liming submitted a second hand-written public records request to the Clerk seeking the following:

1. All interviews with Jeff Fox and Sean Stoops from Summer/Fall 2004 and February 6, 2009;

⁴ "Public Safety Answering Point."

⁵ Although Liming references two public records requests in the complaint, she does not state that she withdrew the February 20 request, and neither party submitted a copy of the email to this Office. Liming also contends that the Clerk altered her original request to remove Avon Chief of Police Sean Stoops name from the request. APD denies the alteration occurred.

2. All interviews with Avon Police for the period of Summer 2004 to January 2005, December 2008, and January 2005 to July 31, 2010.
3. Police reports related to 388 Great Lakes Circle, Apartment B, Avon; 1150 Coppermill Lane, Apartment E, Indianapolis, and 10709 Hanover, Indianapolis.
4. Any documents with the names Tracey Siener, Tracey Jaffri, and Tracey Liming from 2004 to 2017, and/or Sean Stoops and Jeff Fox.

As before, the Clerk responded to Liming's request in writing, dated March 12, acknowledging receipt of the request and replying to each of the items by stating the town may have responsive records. The Clerk indicated that the town believed it would be able to produce any responsive documents by April 5.

On April 18, 2018, Liming filed a formal complaint with this Office.

The APD denies Liming's claim that the department violated APRA. For starters, APD contends that it conducted an exhaustive search of its records to fulfill Liming's request, and ultimately discovered 473 pages of documents, 16 DVDs of video surveillance, and one taped interview record responsive to the request. Once assembled, the town attorneys reviewed the records to ensure APD did not disclose confidential or protected information. APD contends that the town attorneys cleared the documents for production on May 17, 2018, and the Clerk notified Liming of their availability for pick up.

Liming concedes that she received the records but insists that the records are not responsive to her request.

Still, APD argues that it fully complied with APRA and provided copies of responsive records within a reasonable time, especially in view of the high volume of responsive materials, the time period covered by the request, the number of persons covered by the request, and the age of the responsive documents.

What is more, APD contends that it provided Liming with some records that the department had discretion to withhold as investigatory records under APRA.

ANALYSIS

The primary issue in this case is whether the Avon Police Department improperly denied Tracey M. Liming access to public records in violation of the Access to Public Records Act.

1. The Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.*

There is no dispute that the Avon Police Department (“APD”) is a public agency for the purposes of the APRA;

and thus, subject to the Act's disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the Assessor's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Liming's Requests and Avon's Response

Liming argues that APD violated APRA because it unjustly denied her access to public records. This Office cannot agree. For starters, based on the evidence submitted, it is clear that the Town of Avon timely acknowledged Liming's public records requests in writing. In the initial response, the Clerk indicated that the town would gather and produce records responsive to Liming's request. Avon's initial response was appropriate under the law and certainly not a denial.

Granted, the response indicated that the town believed it would be able to produce responsive records on or before April 5, 2018. Simply put, that did not happen. Even so, a public agency's failure to produce responsive records by the date it initially *estimates* does not necessarily constitute a denial.

Here, the town estimated, in its response, that it believed it would be able to produce responsive records in fewer than 30 calendar days, which seems like an overly ambitious undertaking in view of the request. Regardless, in this case, a denial of access did not occur when the town missed its estimated completion date.

At the time Liming filed her formal complaint with this Office, it was unknown as to the yield of the search. All told, it equated to 473 pages of documents, 16 DVDs of video surveillance, and one taped interview record. Seventy days to find and process this volume of information is not unreasonable.

3. Liming's Requests for 911 Recordings

As set forth above, Liming also asserts in her formal complaint that the Hendricks County Communication Center ("HCCC") violated APRA by not providing her with recordings of all the 911 calls she has made under three different names from multiple addresses—including two addresses in Marion County— during the past 14 years.

Because the complaint is meritless on its face, this Office did not join the HCCC as respondent nor seek a response to the allegations in this matter.

Even so, this Office will provide guidance as it relates to the request for 911 recordings. In general, recordings of 911 calls are disclosable public records under APRA. Still, these recordings are not required to be retained permanently. Stated differently, the agency is not required by law to keep these recordings forever. Instead, these records—like many others—are subject to a retention schedule.

For instance, the general retention schedule for recordings and transcriptions of emergency and 911 calls between a private citizen (i.e., Liming) and a public safety agency or dispatch staff (i.e., HCCC) may be *destroyed three years* after the call or the conclusion of litigation, whichever is later. *See* PSA-17-21. (https://www.in.gov/iara/files/county_publicsafety.pdf)

In short, the 911 recordings Liming is seeking, for the most part, fall outside the required retention period. That means, the recordings likely do not exist and they do not have to under the law. On the other hand, unless an exception to disclosure applies, if Liming is seeking recordings of 911 calls that are within the retention period, the records must be released.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Avon Police Department has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor